HONOURABLE SRI JUSTICE J.CHELAMESWAR
And
HONOURABLE SRI JUSTICE D.APPARAO

03-08-2006

WRIT PETITION No.15911 of 2006

Between:

M/s. Synergies Castings Limited, Duvvada,
Visakhapatnam. .. Petitioner

And

1. The Deputy Commercial Tax Officer,
Gajuwaka. and others.

..Respondents

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ORDER: (Per JC, J)**:**

The petitioner, a limited company and a registered dealer both under the A.P.V.A.T. Act and the C.S.T. Act. It appears from the affidavit that the petitioner took over a unit (the details of which are not given in the affidavit filed in support of the writ petition) of another company viz., M/s.Synergies Dooray Automotive Limited. A vague statement is made in the affidavit filed in support of the writ petition that the above mentioned company was granted 'deferment' and this Court is compelled to understand during the course of arguments that the expression 'deferment' means deferment of sales tax payment under some scheme of industrial promotion introduced by the State of Andhra Pradesh.

2. Consistent with the quality of the pleadings in the writ petition, the petitioner understood that the benefit of deferment referred to above granted in favour of above mentioned company, would accrue to the benefit of the petitioner-company on the "turn over of the unit", and therefore, it did not pay the tax and filed 'nil' returns for the periods between May, 2005 and August, 2005.

3. The 2nd respondent-Assistant Commissioner (CT), Visakhapatnam, issued a notice proposing to levy of penalty of the petitioner for filing such 'nil' returns under Section 53 (3) of the A.P.VAT Act and read with Section 9 (2) of the CST Act. The petitioner replied to the show cause notice stating that he independently made an application for the extension of the benefit of deferment of tax and the said application is pending consideration before the State of Andhra Pradesh. However, the 2nd respondent by his order dated 19-01-2006 confirmed the proposal made in the show cause notice and imposed a penalty of 37,63,555/-.

4. Aggrieved by the same, the petitioner preferred an appeal before the 3rd respondent-Appellate Deputy Commissioner (CT), Visakahaptnam, unsuccessfully. The 3rd respondent by order dated 27-04-2006, confirmed the order of the 2nd respondent. The petitioner, therefore, carried the matter in further appeal before the Sales Tax Appellate Tribunal. Pending such an appeal, the petitioner moved an application before the 4th respondent-Joint Commissioner (CT), Hyderabad, seeking the stay of the recovery of the penalty referred to above. Admittedly, the said application is to be heard on 11-08-2006.

5. In the meanwhile, the 1st respondent-Deputy Commercial Tax Officer, Visakhapatnam, attached the bank account of the petitioner by issuing notice dated 28-07-2006 invoking the powers under Section 52 (B) of the A.P.Revenue Recovery Act, obviously, for the purpose of realization of the penalty amount referred to above. Hence, the present writ petition.

6. In the circumstances, we are of the opinion that the matter can be disposed of at this stage directing the 1st respondent-Deputy Commercial Tax Officer, Visakhapatnam, to revoke the notice dated 28-07-2006 on condition that the petitioner gives immovable property security to the satisfaction of the 1st respondent, and the immovable property security, so given, shall subsist during the pendency of the appeal before the Sales Tax Appellate Tribunal. Depending on the result of the appeal, if the petitioner succeeds, the said security shall lapse, otherwise, the same shall be redeemed, if the petitioner does not choose to pay the penalty.

7. Accordingly, the writ petition is disposed of with the aforementioned direction. No costs.

J.CHELAMESWAR, J

D.APPARAO, J

August 3, 2006.

Note:
Issue C.C. tomorrow.

B/o.
Kvr